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In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 776

W. K. INGRAM, ADMINISTRATIVE OFFICER AND COUNTY JUDGE OF CRITTENDEN COUNTY, ARKANSAS, AND CRITTENDEN COUNTY, ARKANSAS, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the district court (R. 13–25) is reported at 99 F. Supp. 465. The opinion of the Court of Appeals (R. 70–86) is reported at 203 F. 2d 91.

JURISDICTION

The judgment of the Court of Appeals was entered March 17, 1953 (R. 87). The petition for a writ of certiorari was filed May 4, 1953. The jurisdiction of this Court is invoked under 28 U. S. C. sec. 1254 (1).

QUESTION PRESENTED

Whether the approval of the Chief of Engineers and the Secretary of the Army of dismantling plans was required before roadways might be removed from a bridge spanning the Mississippi River.

STATUTES INVOLVED

The relevant portions of the Act of July 20, 1912, 37 Stat. 195, as amended by the Act of August 23, 1912, 37 Stat. 359, are set out in the Statement, *infra*. Section 1 of the Act of March 23, 1906, 34 Stat. 84, 33 U. S. C. 491 provides:

> That, when, hereafter, authority is granted by Congress to any persons to construct and maintain a bridge across or over any of the navigable waters of the United States, such bridge shall not be built or commenced until the plans and specifications for its construction, together with such drawings of the proposed construction and such map of the proposed location as may be required for a full understanding of the subject, have been submitted to the Secretary of War and Chief of Engineers for their approval, nor until they shall have approved such plans and specifications and the location of such bridge and accessory works; and when the plans for any bridge to be constructed under the provisions of this Act have been approved by the Chief of Engineers and by the Secretary of War it shall not be

lawful to deviate from such plans, either before or after completion of the structure, unless the modification of such plans has previously been submitted to and received the approval of the Chief of Engineers and of the Secretary of War.

STATEMENT

Review is here sought of a decision that petitioners may not remove roadways from a bridge over the Mississippi River at Memphis, Tennessee, until plans for such dismantling shall have been approved by the Chief of Engineers and the Secretary of the Army. So far as material, the facts are as follows:

By Act of July 20, 1912, 37 Stat. 195, as amended by the Act of August 23, 1912, 37 Stat. 359, the Arkansas and Memphis Railway Bridge and Terminal Company was authorized to construct a railway bridge spanning the Mississippi River "in accordance with the provisions of the Act entitled 'An Act to regulate the construction of bridges over navigable waters' approved March twenty-third, nineteen hundred and six." The 1912 Act required that, in addition to use for railroad purposes, the bridge be so constructed as to provide a separate roadway for public use as a highway bridge. Plans for the bridge were submitted to the Chief of Engineers and the Secretary of War as provided in the 1906 Act and the bridge, known as the Harahan Bridge, was

accordingly constructed, including projecting structures on each side for roadways (R. 3–4, 8).

Under authority given by the 1912 Act, as amended, the Bridge Company conveyed the roadways to the City of Memphis and Crittenden County, Arkansas, which thereafter maintained them. Recently a new highway bridge has been constructed some 400 feet from the Harahan Bridge. When the new bridge was opened to traffic, petitioners threatened to dismantle the Arkansas portion of the old roadways in order to use the structural steel elsewhere (R. 32). This suit was then brought by the United States to enjoin such dismantling.[1] After trial, the district court dismissed, holding, *inter alia,* that the submission of plans for the dismantling was not required under the 1906 Act because the change did not affect the location of the bridge or its obstructive nature to navigation (R. 17–20). In reversing, the Court of Appeals held that under the Act all plans for the modification of an approved bridge must be submitted for approval (R. 74–78).[2]

[1] The dismissal on jurisdictional grounds of a similar suit brought by the City of Memphis was reversed by the Court of Appeals and remanded for trial. *City of Memphis* v. *Ingram*, 195 F. 2d 338 (C. A. 8).

[2] The Court of Appeals, as did the district court, rejected two other grounds for the action, one based upon the terms of the 1912 Act (R. 80–82) and the other based upon the Federal Highway Act (R. 82–86).

ARGUMENT

Petitioners do not challenge the power of Congress to require that plans for bridges over navigable streams or modifications of those plans be submitted to the named officials (R. 74–75). And they admit that the plans for dismantling part of the roadways have not been so submitted (R. 17). The 1906 Act is, as the court below pointed out (R. 76–77), unambiguous in providing that it shall not be lawful to deviate from the approved plans "either before or after completion of the structure" unless the modification of the plans is approved. Petitioners' view (Pet. 8) that the plans may be disregarded at will so long as navigation is not affected, is contrary to the plain language of the Act. As the court below put it (R. 78), elimination of the roadways at the time the bridge was built would clearly have violated the statute and no less plainly would the removal of the roadways after construction constitute a deviation from the plans. The argument advanced in point III of the petition (pp. 10–13) simply comes down to saying that under the facts of this case a refusal to approve the plans for dismantling would be arbitrary. But, as the Court of Appeals suggested (R. 78), it is not for the courts to anticipate what the Secretary's action should be or to assume that he will act arbitrarily.

Petitioners' notion (Pet. 7–8) that the functions of the Secretary are strictly limited to the

prevention of obstructions to navigation of the river places unwarranted restrictions upon the plain language of the Act and ignores other provisions of the 1906 Act, which show that Congress had in mind interests such as commerce over the bridge as well as navigation under it. Thus, the Act declares the bridge to be a post route, deals with such matters as toll charges and the maintenance of telegraph and telephone lines and provides for equal use by all railroad companies, the amount of charges for such use to be fixed by the Secretary in the event of disagreement. Act of March 23, 1906, Sections 2, 3, 34 Stat. 85, 33 U. S. C. 492, 493. Subsequent legislation has enlarged the functions of the Secretary in regard to such matters as the regulation of toll charges for the use of bridges. Act of August 21, 1935, 49 Stat. 670, 33 U. S. C. 503, 504. Thus, the Secretary might well consider the interests of the City of Memphis in determining whether to approve petitioners' plans for dismantling the Arkansas portion of the roadways.[3]

There is no question here whether slight changes would constitute a deviation from the plans as in *City of Benwood* v. *Interstate Bridge Co.*, 30 F.

[3] There is nothing in the Act of August 10, 1939, 53 Stat. 1338, authorizing construction of the new bridge, to support petitioners' suggestion (Pet. 12), made for the first time in this Court, that Congress impliedly repealed the 1906 Act as applied to the Harahan Bridge or impliedly consented to dismantling of the roadways on that bridge.

Supp. 952 (N. D. W. Va.), cited by petitioners (Pet. 9), since dismantling the roadways would change the entire nature of Harahan Bridge (see R. 79). Nor is there conflict with *Midland Bridge Co.* v. *Houston & B. V. Ry. Co.,* 268 Fed. 931 (C. A. 5), where in a suit between private parties on a contract relating to removal of steel from the river where it fell during construction of the bridge, the court held, *inter alia,* that even if approval for a change of plans as to depth of excavation of a pier was necessary, the lack of approval would not affect the rights of the parties in the contract action.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ROBERT L. STERN,
Acting Solicitor General.
J. EDWARD WILLIAMS,
Acting Assistant Attorney General.
ROGER P. MARQUIS,
Attorney.

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